

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LESLIE BROWN,

Plaintiff,

ORDER
08 CV 2043 (BMC)(LB)

-against-

NEW YORK CITY POLICE DEPARTMENT;
DETECTIVE ROURKE;
DETECTIVE JOSEPH CALLAHAN;
DETECTIVE CHARLES SCHEFERSTON;
DETECTIVE JOSEPH DUNNE;
DETECTIVE DONOVAN WRIGHT;
DETECTIVE JOHN CAPIZZI;
DETECTIVE MICHAEL DIMEGLIO;
DETECTIVE DANIEL SAID;
UNDERCOVER OFFICER #5422;
UNDERCOVER OFFICER #1999;
UNDERCOVER OFFICER #1160;
UNDERCOVER OFFICER #7975;
LT. BRIAN KELLY;
SGT. MATTHEW FICANO,

Defendants.

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BLOOM, United States Magistrate Judge:

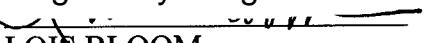
By letter dated February 17, 2010, defendants' counsel informs the Court that plaintiff was scheduled for a deposition that day, but failed to appear. (Document 61.) According to the letter, plaintiff telephoned defendants' counsel an hour before the deposition was to start to inform him that plaintiff was in the middle of a "fiasco" that would prevent him from appearing at the deposition, and that may affect his ability to continue prosecuting his case. Defendants request that the Court recommend dismissal of his case under Fed. R. Civ. P. 37(b)(2) and 41(b). Defendants' request is denied without prejudice.

Although plaintiff was directed by the Court on the record during the January 20,

2010 telephone conference to appear at the February 17, 2010 deposition, the Court declines to recommend dismissal under Rule 37 at this time.¹ In an abundance of caution, the Court shall grant plaintiff one last chance to appear for his deposition, which has been scheduled for March 26, 2010 at 10:00 a.m. at the Office of Corporation Counsel for the City of New York, 100 Church Street, New York, New York, 10007. Plaintiff shall timely appear for his deposition at this time. This is an Order. If plaintiff fails to timely appear on March 26, 2010, the Court will recommend dismissal of his case under Fed. R. Civ. P. 37(b)(2)(A)(v).

The deadline for the parties to complete all discovery is hereby extended to March 26, 2010 for the limited purpose of completing plaintiff's deposition. If defendants intend to move for summary judgment, they shall write to Judge Cogan by April 9, 2010 to request a premotion conference.

SO ORDERED.

/Signed by Judge Lois Bloom/

LOIS BLOOM
United States Magistrate Judge

Dated: March 1, 2010
Brooklyn, New York

¹ Dismissal for failure to prosecute under Fed. R. Civ. P. 41(b) is inappropriate because defendants do not address the factors under the rule. See LeSane v. Hall's Sec. Analyst, Inc., 239 F.3d 206, 209 (2d Cir. 2001) (the Court must consider: “[1] the duration of the plaintiff's failures, [2] whether plaintiff had received notice that further delays would result in dismissal, [3] whether the defendant is likely to be prejudiced by further delay, [4] whether the district judge has taken care to strike the balance between alleviating court calendar congestion and protecting a party's right to due process and a fair chance to be heard ... and [5] whether the judge has adequately assessed the efficacy of lesser sanctions.”).